

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Frontline Workers COVID-19 Hazard Pay Rebate Program (LAC 61:I.1919)

In accordance with the emergency provisions of the Administrative Procedures Act, R.S. 49:953 (B), notice is hereby given that the Department of Revenue ("Department") is, by emergency rule, adopting LAC 61:I.1919. The purpose of this regulation is to administer and implement, on an emergency basis, the provisions of Act No. 12 of the 2020 First Extraordinary Session of the Louisiana Legislature. This Emergency Rule revokes the previous Emergency Rule issued on July 13, 2020, and shall be effective September 16, 2020 and continue in effect for 120 days, unless renewed or revoked. This Emergency Rule modifies Section 1919(F)(3) to reduce the reserved allocation of funds for paper applications from 25 percent (\$12,500,000) to 2 percent (\$1,000,000) and is based on the quantity of paper applications received by the Department since inception of the Frontline Workers COVID-10 Hazard Pay Rebate Program.

The promulgation of this rule on an emergency basis is necessary to avoid sanctions or penalties from the United States Government under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). The CARES Act established the Coronavirus Relief Fund (the "Fund") and Louisiana received over \$1.8 billion from the Fund. The Louisiana Legislature has authorized the utilization of \$50 million of the CARES Act funding to provide a one-time hazard pay rebate for essential critical infrastructure workers. The CARES Act provides that payments from the Fund may only be used for COVID-19 related expenses and the United States Treasury has issued Guidance for State, Local and Tribal Governments providing Treasury's interpretation on the permissible uses of the Fund (the "Guidance"). In accordance with the Guidance and the Coronavirus Relief Fund Frequently Asked Questions Updated as of July 8, 2020, any program created using monies from the Fund should be administered in a manner that satisfies the requirements of the CARES Act and maintain records sufficient to demonstrate the monies have been used in accordance with Section 601(d) of the Social Security Act. Any State not utilizing the funding in accordance with the CARES Act and Guidance is subject to a repayment requirement.

This Emergency Rule provides for the administration and implementation of Act No. 12 to provide the \$50 million from the Fund is timely and efficiently distributed to Louisiana's frontline workers during an application window of July 15 to October 31, 2020 in accordance with the CARES Act and the Guidance. Absent utilization of the emergency rule process, the time delay in the rulemaking procedures of R.S. 49:953(A) would render this program obsolete because adoption and promulgation would not occur until after the program's application period ends. Authorization for promulgation of this rule on an emergency basis is hereby deemed necessary by the Secretary of Revenue as legislatively delegated to her by R.S. 51:1787(K)(6).

Under the authority of R.S. 51:1787(K)(6) and 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, adopts LAC 61:I.1919 regarding the Frontline Workers COVID-19 Hazard Pay Rebate Program.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions

§1919. Frontline Workers COVID-19 Hazard Pay Rebate Program

A. General Description. Act 12 of the 2020 First Extraordinary Session of the Louisiana Legislature provides for a one-time hazard pay rebate for essential critical infrastructure workers as those terms are defined in the enabling legislation.

B. Definitions

Assistants and Aides—assistants and aides providing services in the medical and healthcare fields

Department—the Louisiana Department of Revenue.

In-Person Services—services provided on the frontline within Louisiana where the worker was in contact with customers, patients, or the general public and shall not include call center personnel or persons whose job is conducted exclusively via telephone, computer, or other remote or virtual means.

Rebate—one-time hazard pay rebate as defined by Act 12.

Rebate Program—the Frontline Workers COVID-19 Hazard Pay Rebate Program.

Storage and Disposal Personnel—storage and disposal personnel providing services related to residential, commercial, and industrial solid waste and hazardous waste.

Workers—essential critical infrastructure workers as defined by Act 12.

Worker's Residence—any residence or other dwelling occupied by the worker, including the worker's primary residence.

C. Eligibility

1. The Frontline Workers COVID-19 Hazard Pay Rebate Program provides a one-time \$250 rebate for applicants who meet all of the following eligibility requirements:

a. the applicant is determined to be an essential critical infrastructure worker as that term is defined by the federal Cybersecurity and Infrastructure Security Agency (CISA) in its publication "Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response Version 3.1";

b. the applicant was employed in at least one of the following jobs on or after March 11, 2020:

i. nurses, assistants, aides, medical residents, pharmacy staff, phlebotomists, respiratory therapist, and workers providing direct patient care in inpatient and outpatient dialysis facilities;

ii. housekeeping, laundry services, food services and waste management personnel in hospitals and healthcare facilities;

iii. long-term care facility personnel, outpatient care workers, home care workers, personal assistance

providers, home health providers, home delivered meal providers, and childcare service providers;

iv. emergency medical services (EMS) personnel, fire and rescue personnel, law enforcement personnel, and public health epidemiologists;

v. bus drivers; retail fuel service personnel; sanitation personnel; residential, commercial and industrial solid waste and hazardous waste removal personnel; storage and disposal personnel;

vi. grocery store, convenience store, and food assistance program personnel;

vii. mortuary service providers; or

viii. veterinary service staff; and

c. the applicant was required to provide in-person services outside of the worker's residence substantially dedicated to responding to or mitigating the COVID-19 public health emergency for at least 200 hours during the period from March 22, 2020, through May 14, 2020.

2. Only applicants whose adjusted gross income is \$50,000 or less are eligible for the rebate. For purposes of this requirement, the adjusted gross income on the applicant's 2019 income tax return shall be used. If the applicant has not filed his or her 2019 income tax return, the adjusted gross income from the applicant's 2018 income tax return shall be used.

3. If the applicant is employed in one of the enumerated jobs in Subparagraph C.1.b above and worked at least 200 hours outside his or her residence during the period between March 22, 2020, and May 14, 2020, the applicant shall be presumed to have been responding to or mitigating the COVID-19 public health emergency.

a. This presumption shall be rebuttable by evidence or documentation obtained from the applicant's employer.

4. To the extent possible, the department shall rely upon definitions in the CISA guidance of the enumerated jobs listed in Subparagraph C.1.b of this Section. However, when no definition is provided, the department shall apply a broad, definitional approach giving words their common, generally understood meaning for purposes of determining applicant eligibility.

5. The representative of the estate of any worker who met all rebate eligibility requirements, but who died before applying for the rebate, shall be allowed to claim the benefit on behalf of the worker.

D. Application

1. The department shall receive applications for the rebate between July 15, 2020, and October 31, 2020, on Form R-6186, *Frontline Workers COVID-19 Hazard Pay Rebate Application*.

2. Applicants may apply either electronically by utilizing a portal on the department's website or by submitting a paper form to the department.

3. If an applicant files both or more than one electronic and paper application, the application received first by the department shall be reviewed for eligibility purposes, and the second and subsequent applications received by the department shall be denied.

4. If an applicant does not complete the application in its entirety, the department shall notify the applicant of the deficiencies by mail. The applicant shall have 30 calendar days from the date of the department's notification to correct the deficiencies. If the applicant fails to respond during the 30-day window, the application shall be denied.

5. The department may consult with Louisiana Department of Economic Development or the Louisiana Workforce Commission to verify information provided on the application. The applicant shall certify on the application that information contained in the files or records of the Louisiana Workforce Commission may be shared with the department.

6. Applications for the rebate shall be considered a report filed for purposes of R.S. 47:1565. Applications and applicant submitted documentation are the records and files of the Secretary of the Department of Revenue and are subject to the confidentiality provisions of R.S. 47:1508.

7. The department may request additional information from an applicant to determine eligibility. A request for additional information shall not impact or change the application's received date for purposes of administration of the rebate program cap if the applicant provides the requested information within 30 calendar days from date of the department's request letter.

E. Payment and Offset of the Rebate

1. Payment of the Rebate

a. after review and verification of the application, payment of the rebate shall be made by direct deposit if bank account and routing information is provided with the application and verified in the Department's record. Otherwise, the payment shall be made by paper check.

b. The rebate shall only be direct deposited into a bank account on which the applicant is a named account holder.

2. Offset of the Rebate

a. After consultation with the Department of Children and Family Services, the department shall offset the rebate for any delinquent child support payments.

b. The department shall also offset the rebate for any reported delinquent spousal support payments.

c. The department shall not offset the rebate for any outstanding tax liabilities or other outstanding judgments or liabilities reported to the department. Creditors and banks shall take reasonable steps to ensure rebates are not seized pursuant to existing judgments and orders.

F. Limitations on the Rebate Program. The rebate program is subject to a \$50,000,000 program cap. Additional rebates beyond the \$50,000,000 may be paid if monies are made available and the Joint Legislative Committee on the Budget approves payment of additional rebates.

2. The cap shall be administered on a first-come, first-served basis based upon the date that the department is in receipt of the application. Applications received on the day the cap is reached shall be paid in the order in which the applications were received and the rebates shall not be prorated.

a. For electronic applications, the receipt date shall be the date the application is submitted through the department's website.

b. For paper applications mailed via the U.S. Postal Service, the receipt date shall be the postmark date as shown on the envelope containing the paper application.

c. For paper applications transmitted via common carrier, the receipt date shall be the date the application is delivered to the department.

3. Two percent of the cap, or \$1,000,000, shall be reserved for rebate claims filed on paper applications. If the entire \$1,000,000 is not utilized to pay rebate claims filed by paper applications received on or before October 31, 2020,

the remaining available amount shall be used to pay any remaining rebate claims received by electronically submitted applications which have not been paid because the remaining \$49,000,000 cap has been exhausted.

4. In the event additional rebates over the \$50,000,000 program cap are made available and the Joint Legislative Committee on the Budget approves payment of additional rebates, rebate claims previously denied due to the attainment of the \$50,000,000 cap shall take priority and be issued in order of the date that the department received the application. In this event, applicants shall not be required to submit a subsequent application.

G. Recapture of the Rebate

1. In accordance with R.S. 47:1561.2, rebates previously granted to an applicant, but later disallowed, may be recovered by the secretary of the Department of Revenue through any collection remedy authorized by R.S. 47:1561 and initiated within three years from December 31 of the year in which the rebate was paid or to assess or to collect under any other provision of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and R.S. 51:1787(K).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 46:

Kimberly Lewis Robinson
Secretary

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